This document is scheduled to be published in the
Federal Register on 04/05/2012 and available online at
http://federalregister.gov/a/2012-08187, and on **FDsys.gov**

[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2011-0087]

Petition Requesting Exception from Lead Content Limits; Notice Granting Exception.

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission" or "CPSC" or "we") has received a petition requesting an exception from the 100 ppm lead content limit under section 101(b) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), as amended by Public Law 112-28. We are granting an exception to the 100 ppm lead content limit for certain aluminum alloy components of children's die-cast, ride-on pedal tractors, and similar component parts made of aluminum alloy on similar ride-on children's products for children ages 3 years and older. Such products may include other children's ride-on tractors, children's ride-on cars, and other ride-on toys. These aluminum alloy components must meet a lead content limit of 300 ppm.

DATES: The effective date is [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; e-mail: khatlelid@cpsc.gov.

SUPPLEMENTARY INFORMATION: Under section 101(a) of the CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain lead content in excess of 100 ppm are considered to be banned hazardous substances under the Federal Hazardous Substances Act ("FHSA").

Section 101(b)(1) of the CPSIA provides for a functional purpose exception from the lead content limits, under certain circumstances. The exception allows CPSC, on its own initiative, or upon petition by an interested party, to exclude a specific product, class of product, material, or component part from the lead limits established for children's products under the CPSIA if, after notice and a hearing, we determine that: (i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with section 101(a) of the CPSIA, by removing the excessive lead or by making the lead inaccessible; (ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and (iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse. Under section 101(b)(1)(B) of the CPSIA, there is no measurable adverse effect on public health or safety if the exception will result in no measurable increase in blood lead levels of a child.

On September 29, 2011, Joseph L. Ertl, Inc., Scale Models and Dyersville Die Cast ("petitioner"), submitted a petition requesting an exception from the lead content limit of 100 ppm under section 101(b) of the CPSIA for its die-cast, ride-on pedal tractors, scaled for children ages 3–10 years. Given the highly technical nature of the information sought, including data on the lead content of the product and test methods used to obtain those data, we believe that notice and solicitation for written

comments is the most efficient process for obtaining the necessary information, and provides adequate opportunity for all interested parties to participate in the proceedings. Accordingly, we invited comments on the issues raised by the petition. In the *Federal Register* of November 16, 2011 (76 FR 70975), we invited comments on the issues raised by the petition with comments due on December 16, 2011. On January 5, 2012 (77 FR 478), we reopened the comment period for 30 days, with comments due on February 6, 2012. We received one comment in support of the petition. The commenter stated that pedal tractors with aluminum alloy components cannot practicably be manufactured in accordance with the 100 ppm lead content requirement. The commenter also stated that the aluminum alloy components are not likely to be placed in the mouth or ingested and will not have a measurable adverse effect on public health or safety.

The petitioner stated that the components of its pedal tractors are made of aluminum metal die castings, which are the best alloy of choice for pedal tractor production, based on weight, cost, structural properties, surface finish and coatings, corrosion resistance, bearing properties, and wear resistance. The pedal tractor components are manufactured via the aluminum die-casting process. Although the petitioner stated that it is able to meet the lead content requirements of 300 ppm for its pedal tractor components, it is unable to meet consistently the 100 ppm lead content limits, due to alloys used in the aluminum die-cast process. Accordingly, the petitioner requested an exception from the 100 ppm lead content limit.

For the reasons described in CPSC staff's briefing package, available at http://www.cpsc.gov/library/foia/foia12/brief/ertl.pdf, we agree with the petitioner

and the commenter that an exception to the 100 ppm lead content limit for certain children's ride-on pedal tractor component parts is appropriate. The petitioner indicated that two aluminum alloys with relatively low lead concentration can be purchased and used to manufacture the pedal tractor products. One of these aluminum alloys (A380.1) may contain more than 300 ppm lead, although the petitioner indicated that this alloy can be obtained, with careful purchasing, with a lead content of no more than 300 ppm. The petitioner indicated that the second aluminum alloy (A413.1) that can be used to manufacture the products is available with less than 200 ppm lead. While the petitioner indicated that it is possible to manufacture their products with the specific alloy with lead content less than 200 ppm, the A380.1 alloy, or a similar alloy, with lead content no more than 300 ppm, is a practicable material for manufacturing the component parts of the pedal tractors because the A380.1 aluminum alloy is one of the most commonly used aluminum alloys in manufacturing and is more readily obtainable from sources than the A413.1 aluminum alloy. In addition, the A413.1 alloy costs $0.99 to $1.65 per unit more than the A380.1 alloy (about 1 percent of the cost of the product), resulting in additional material costs of the product. Obtaining aluminum alloys at 100 ppm or other substitute alloys was considered not practicable for the petitioner. The use of another metal alloy, such as steel, or using plastic molded component parts was not practicable because it would result in completely retooling the manufacturing process and result in products that appeared different from the current product, which uses die-cast component parts.

In addition, the products included in the petition are similar to two types of products that have specific statutory provisions regarding lead content requirements. The CPSIA, as amended by Public Law 112-28, established new provisions for specific exceptions from the 100 ppm lead content requirement. Section 101(b)(5) of the CPSIA provides that the lead content limit does not apply to off-highway vehicles. Section 101(b)(6) of the CPSIA also provides that for metal component parts of bicycles and related products, the lead limit is 300 ppm, not 100 ppm, as otherwise applicable to children's products.

The petitioner's children's ride-on pedal tractors made with aluminum alloys are therefore granted an exception from the 100 ppm lead content limit, and allowed to have a lead limit of 300 ppm instead, because it is not practicable to impose the lower lead limit on such aluminum alloys. These aluminum components include: body castings (right and left sides), rear wheel hubs, wide front axle yokes, wide front-end adaptor brackets, and other component parts that are similar to these parts and are not likely be placed in the mouth or ingested or extensively contacted by children because of their function and location on the product. The exposure to lead in such parts at the 300 ppm limit is expected to be so low that it would have no measurable adverse effect on public health or safety as defined at 15 U.S.C. 1278a(b)(1)(B), taking into account normal and reasonably foreseeable use and abuse.

For the same reasons, children's products that are similar, such as other children's ride-on tractors, children's ride-on cars, and other ride-on toys intended for children ages 3 years and older that contain similar aluminum alloy component

parts, including body castings (right and left sides), rear wheel hubs, wide front axle yokes, wide front-end adaptor brackets, and other component parts that similar to these parts and are not likely to be placed in the mouth or ingested, or extensively contacted by children because of their function and location on the product must meet a lead content limit of 300 ppm for the aluminum alloy component parts. The exposure to lead in these similar component parts is expected to be so low that it would have no measurable adverse effect on public health or safety as defined at 15 U.S.C. 1278a(b)(1)(B), taking into account normal and reasonably foreseeable use and abuse.

Dated: April 2, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012-8187 Filed 04/04/2012 at 8:45 am;
Publication Date: 04/05/2012]